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March 15, 2012

Kurt V. Berchtold, Executive Officer
Regional Water Quality Control Board
Santa Ana
3737 Main Street, Suite 500
Riverside, California 92501

Re: Basin Plan Amendments to Revise Recreation Standards for Inland Fresh Surface Waters in the Santa Ana Region

Dear Mr. Berchtold,

On behalf of Heal the Bay, we submit the following comments on *Basin Plan Amendments to Revise Recreation Standards for Inland Fresh Surface Waters in the Santa Ana Region* ("Draft Amendment") issued by the Santa Ana Regional Water Quality Control Board (Regional Board) for public review on January 12, 2012. We focus our comments on the proposals as described in the Executive Summary only, due to time constraints. We appreciate staff's willingness to include our comment letter in the record and in Board materials despite being submitted past the original response deadline.

Our overarching concern with these proposals is that human health will not adequately be protected. This concern is discussed in more detail below, and our comments follow the outline of the Executive Summary.

#1. Rename the REC1 use from "Water Contact Recreation" to "Primary Contact Recreation."

We echo USEPA's concern expressed in their February 23, 2012 comment letter that renaming the REC1 use would be inconsistent with the State Water Resources Control Board's definition that was developed through an extensive process. Thus, we urge the Regional Board to retain the current definition.

#2. Delete the current Basin Plan fecal coliform objectives and replace with *E. coli* objectives.

We concur with Regional Board's general finding that fecal coliform objectives be replaced by *E. coli* objectives. However, we are extremely concerned by the proposal to require at least 5 samples over a 30 day period. Instead, the Basin Plan should specify that a *rolling* geometric mean be calculated based on five samples collected over the last thirty days or the five most recent samples. As shown in the Regional Board's data analysis, there are many instances where only four samples were collected in a 30 day period. This would lead to no geometric mean



calculation, therefore putting the public's health at risk. Not having a geomean calculation is problematic because it helps to reveal chronic pollution problems.

In addition, the Regional Board must include a single-sample limit of *E. coli* density of 235/100 ml. The single sample is critical for both public health protection and compliance purposes. There is no justification as to why this criterion is absent in the proposal.

#3. Establish a narrative pathogen objective

It is unclear why the Regional Board would propose a narrative pathogen objective. The numeric recreational water quality criteria are based on health impacts. These numeric criteria should be sufficient to protect public health.

#4 and #5. Sub-divide REC1 standards into tiers based on intensity of use

We urge the Regional Board to reject the proposal of a tiered approach based on intensity of use. Each individual who recreates in a waterbody should be afforded the same public health protection, regardless of how many "fellow swimmers" are utilizing the same waterbody. In fact USEPA recognizes the flaw with the tiered approach in the proposed Recreational Water Quality Criteria (Office of Water 820-D-11-002). USEPA states that "the 2012 RWQC are no longer recommending multiple "use intensity" values, in an effort to increase national consistency across bodies of water and ensure equivalent public health protection in all waters." (Criteria at 4). Thus, one set of standards based on the same health protection is appropriate.

In addition, we are concerned with the Regional Board's assessment that the single sample value is for posting purposes only and that insufficient data may exist for the geomean calculation. Both the single sample and the geomean standards play an important role in public health protection and compliance assurance. The Regional Board cannot simply decide to use one or the other. Any derivation of the single sample or geomean from default values are a standards change and would be subject to EPA approval. Both standards must be used, and a sufficient number of samples should be taken for the geomean calculation (the five most recent samples or five samples collected over the last 30 days).

#6. Temporary suspension of bacteria objectives

The term "high flow suspension" is very misleading. Did the Regional Board collect flow data over an extended period of time in the waterbodies proposed for temporary suspension of bacteria objectives? Without proper rain gauges on a specific waterbody, it is impossible to know if the flow is truly significantly elevated. Simply relying on nearby (or regional) rain gauge data is not sufficient to understand the flow regime. Given the lack of understanding about flow, it is impossible to predict when individuals could be recreating in a waterbody. People who swim or surf in wet or winter weather are entitled to the same health protections and water



quality standards as those that swim at beaches during the Fourth of July. Also the State Water Board made this determination as they acknowledged that swimming and surfing are activities that occur in Southern California waters 365 days a year, rain or shine. Of note, high bacteria concentrations from upstream waterbodies could contribute to exceedances of water quality standards in downstream waterbodies. Thus we urge the Regional Board to not include a temporary suspension of bacteria objectives.

Also we echo USEPA's concerns that the definition of "modified channels" can lead to use suspension in any water body where any vegetation has been removed or had any small modifications. This is completely inappropriate.

#7. Re-designate specific waters to remove REC1 or REC1 and REC2 uses.

As this is the first Use Attainability Analysis (UAA) performed by the Santa Ana Region Board, and only second in the entire state, we are extremely concerned about the bad precedent this Basin Plan amendment sets for future dedesignation efforts throughout the state.

In fact, the proposal sets an incentive to channelize inland waters in order to dedesignate beneficial uses and have less stringent requirements. The additional regulatory incentive of dedesignation will only lead to more efforts to channelize creeks and streams to prevent flooding, rather than more ecologically friendly flood control efforts or a bioengineering approach. More natural, bioengineered approaches to flood control will likely result when beneficial use designations are maintained.

In addition, waterbodies dedesignated from a REC1 to a REC2 or complete dedesignation from water quality standards could stall restoration efforts. Millions of dollars in bond funds have been allocated to develop riparian restoration and enhancement plans and projects for many degraded waterways in the state. If efforts to improve water quality and restore riparian resources will result in tougher regulatory requirements, this will provide a tremendous disincentive for restoration and enhancement projects. The current regulatory framework provides no such incentive because the potential REC1 beneficial use exists on most of the receiving waters that are the focus of dedesignation efforts. Modification of the current Basin Plan beneficial uses could result in the unintended consequence of providing a disincentive to the many long-overdue restoration efforts of urban creeks and rivers. Also, one can easily see how this creates an incentive for resource management agencies to limit access to the very resources the Regional Board is trying to protect. For example, why would a resource management agency put in a new bike path segment along a concrete lined receiving water if the beneficial action would lead to tougher regulatory requirements?



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The Regional Board states that dedesignated waters would be reviewed at least once every three years during the Triennial Review process. Given resource constraints, it is impossible that this review would be given the enormous amount of time needed to review all of the data and science.

#9. Delete the bacterial quality objective for MUN

How did the Regional Board determine that the waterbodies in question do not meet the threshold for MUN as described in the State Board's Sources of Drinking Water Policy? Federal regulations prohibit removal of designated uses which are existing uses, as defined in 40 CFR Sect. 130.3, unless a use requiring more stringent criteria is added. We echo USEPA's concern that documentation is lacking showing that the proposed excepted waterbodies do not have existing MUN use designations. Thus, the Regional Board should not remove this beneficial use.

In conclusion, the Regional Board's proposal has major implications on public health protection. As discussed above, many elements of the proposal will put recreators at greater risk and will not protect beneficial uses. At the same time, the proposal will likely stall restoration and water quality improvement efforts. Heal the Bay believes that the proposed Basin Plan amendment is the wrong action at the wrong time. Thus, Heal the Bay opposes the proposal as discussed above.

Please let me know if you have any questions.

Sincerely,

Kirsten James, MESM
Water Quality Director